

Ram Naresh Singh

v.

State of Bihar & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE H.L. DATTU HON'BLE MR. JUSTICE ANIL R. DAVE

Civil Appeal No. 2792 Of 2012 (Special Leave Petition(C) No. 22656 Of 2010) | 14-03-2012

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of Judicature at Patna in Civil Writ Petition No.10478 of 2005 dated 3.3.2010. By the impugned judgment and order, the High Court has rejected the Writ Petition filed by the appellant herein.

3. The facts in nutshell are: The appellant was appointed on 16.02.1976 as Basic Health Worker ('BHW' for short) by respondent no.4 and was posted at Primary Health Centre, Mahua, District Vaishali, Bihar.

4. While working as Basic Health Worker, the appellant had made a representation on 15.11.1991, inter alia, requesting the respondents herein to convert his post of BHW to a non-field position, namely to a clerical post due to his ill-health. On receipt of the said representation, respondent no.3 herein had directed the respondent no.4 to accept the representation so filed and pass necessary orders. Pursuant to the direction so issued, respondent no.4 had passed an order dated 30.12.1991, thereby, converting the post of BHW to the post of a non-field worker, namely, a clerical post.

5. While the appellant was working on the aforesaid post, a show cause notice dated 15.10.1996 had been issued by respondents, inter alia, directing the appellant to show cause as to why the post so converted should not be cancelled and the appellant should not be reverted to his original post, namely, BHW. It

appears that the appellant had replied to the said show cause notice by his letter dated 23.10.1996. In spite of the receipt of the said reply, the respondents had not done anything in the matter for the reasons best known to them. Thereafter, yet another show cause notice came to be issued on 12.01.2000, that is, after four years from the date of the first show cause notice. Even the said notice came to be replied by the appellant by his letter dated 09.06.2000. In spite of receipt of the said reply, the respondents, once again, had not chosen to pass any orders pursuant to their show cause notices.

6. The respondents had also issued a third show cause notice dated 6.11.2004 and a fourth show cause notice on 22.03.2005, inter alia, directing the appellant to show cause as to why the post that he was holding, namely clerical post should not be cancelled and he should not be reverted to the post of BHW and also for recovery of the excess salary paid to the appellant for the period during which he was working on the clerical post. The appellant, after receipt of the show cause notices, had replied to the same vide his letter dated 12.05.2005. After the receipt of the said reply, the respondents have now chosen to pass the order dated 17.06.2005, cancelling the clerical post that was offered to the appellant and further for recovery of the excess amount of salary received by him. Aggrieved by the said order, the appellant had approached the Writ Court.

7. The Writ Court had directed that the matter be placed before a larger Bench in view of the conflicting decisions of the same Court.

8. The Division Bench, after considering the merits of the Writ Petition, has rejected the same. That is how the appellant is before us, in this appeal.

9. Heard learned counsel for the parties to the lis.

10. Learned counsel appearing for the appellant, would contend that the respondents ought not to have passed the order of recovering the excess of salary paid to the appellant when he has actually discharged the functions of a clerk in the respondent's establishment. Further, it is stated that the appellant had not obtained the clerical post by playing fraud, mis-representation or coercion on the respondents and since the respondents had acted upon the

representation filed by the appellant, they should not be allowed to recover the excess salary paid to the appellant. In aid of his submission, the learned counsel has drawn our attention to the observations made by this Court in the case of Purushottam Lal Das & Ors. Vs. State of Bihar & Ors.,(2006) 11 SCC 492 .

11. Per contra, learned counsel appearing for the State of Bihar and its functionaries, would submit that the appellant was not entitled to occupy the post of a clerk, since the appellant was appointed primarily as a BHW. It is also brought to our notice that the pay scales of the two cadres are totally different and, therefore, the respondents on a sympathetic consideration ought not to have permitted the appellant to work in a non--field post, namely, a clerical post. That is how the learned counsel justifies the orders passed by the respondents dated 17.06.2005.

12. The second issue canvassed by learned counsel appearing for the appellant, in our view, is no more res integra, in view of the observations made by this Court in the case of Purushottam Lal Das & Ors. (supra) and insofar as the first issue is concerned, in our opinion, the respondents at the earliest opportunity had initiated appropriate proceedings for cancellation of the appointment that was offered to the appellant and on a later date had also issued a notice informing the appellant that while cancelling the appointment that was offered to the appellant, they would also recover the excess of salary paid to the appellant. The appellant, being aggrieved by the said order dated 17.06.2005, had approached the Writ Court. Further, the appellant has retired from the service after attaining the age of superannuation, some time in the year 2011.

13. In our opinion, insofar as the period between 17.06.2005 and till the appellant attained the age of superannuation, the respondents are entitled to recover the excess of salary paid to the appellant for the reason that the respondents had taken effective steps to cancel the appointment that was offered to the appellant and, further to recover the excess of amount paid to the appellant while he was working in a clerical cadre.

14. Insofar as the earlier period is concerned, we cannot find fault with the appellant for the reason that he had only made a representation before the respondents bringing to their notice his illness and other physical disabilities to

perform his functions as BHW. That representation of the appellant had been sympathetically considered by the respondents and, accordingly, they had permitted the appellant to work in the clerical post. Since, the appellant did not obtain a clerical post either by playing fraud or mis--representation or by exerting pressure, the respondents are not entitled to recover any excess salary paid to the appellant from the date of conversion of his post till the date of passing the cancellation order dated 17.06.2005.

15. With these observations and directions, the appeal is partly allowed. No costs.

16. Ordered accordingly.